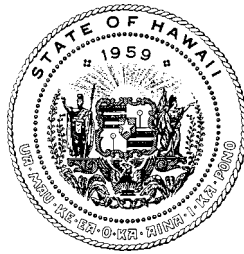


State of Hawaii

WAGE AND HOUR LAW
and
RELATED ADMINISTRATIVE RULES



Wage Standards Division

Department of Labor and Industrial Relations

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Hawaii Revised Statutes

CHAPTER 387
WAGE AND HOUR LAW

SECTION

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Law Journals and Reviews

Employee Rights Under Judicial Scrutiny: Prevalent Policy Discourse and the Hawai'i Supreme Court. 14 UH L. Rev. 189.

Case Notes

Chapters 387 and 388 serve to prevent employer from withholding sums or benefits to which employee has rights by virtue of contract with employer, not a predecessor. 661 F.2d 776.

§387-1 Definitions. As used in this chapter:

"Agriculture" means agriculture as defined in section 3(f) of the Federal Fair Labor Standards Act of 1938, or as the same may be amended from time to time.

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations.

"Employ" includes to permit or suffer to work.

"Employee" includes any individual employed by an employer, but shall not include any individual employed:

- (1) At a guaranteed compensation totaling \$2,000 or more a month, whether paid weekly, biweekly, or monthly;
- (2) In agriculture for any workweek in which the employer of the individual employs less than twenty employees or in agriculture for any workweek in which the individual is engaged in coffee harvesting;
- (3) In domestic service in or about the home of the individual's employer or as a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization exempt from income tax under section 501 of the federal Internal Revenue Code;
- (4) By the individual's brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent, or parent-in-law;

- (5) In a bona fide executive, administrative, supervisory, or professional capacity or in the capacity of outside salesperson or as an outside collector;
- (6) In the propagating, catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponge, seaweed, or other aquatic forms of animal or vegetable life, including the going to and returning from work and the loading and unloading of such products prior to first processing;
- (7) As a seaman;
- (8) As a driver of a vehicle carrying passengers for hire operated solely on call from a fixed stand;
- (9) As a golf caddy;
- (10) By a nonprofit school during the time such individual is a student attending such school;
- (11) In any capacity if by reason of the employee's employment in such capacity and during the term thereof the minimum wage which may be paid the employee or maximum hours which the employee may work during any workweek without the payment of overtime, are prescribed by the federal Fair Labor Standards Act of 1938, as amended, or as the same may be further amended from time to time; provided that if the minimum wage which may be paid the employee under the Fair Labor Standards Act for any workweek is less than the minimum wage prescribed by section 387-2, then section 387-2 shall apply in respect to the employees for such workweek; provided further that if the maximum workweek established for the employee under the Fair Labor Standards Act for the purposes of overtime compensation is higher than the maximum workweek established under section 387-3, then section 387-3 shall apply in respect to such employee for such workweek; except that the employee's regular rate in such an event shall be the employee's regular rate as determined under the Fair Labor Standards Act;
- (12) As a seasonal youth camp staff member in a resident situation in a youth camp sponsored by charitable, religious, or nonprofit organizations exempt from income tax under section 501 of the federal Internal Revenue Code or in a youth camp accredited by the American Camping Association; or
- (13) As an automobile salesperson primarily engaged in the selling of automobiles or trucks if employed by an automobile or truck dealer licensed under chapter 437.

"Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the State or any political subdivision thereof or the United States.

"Industry" means a trade, business, industry, or branch thereof, or group of industries in which individuals are employed.

"Seasonal pursuit" means one in which it is customary in each year for the volume of employment in such pursuit to be substantially increased during a regularly recurring period or periods of seasonal activity, and in the remainder of the year, owing to climate or other natural conditions, for the volume of employment to be substantially decreased. Periods of seasonal activity shall be considered as "regularly recurring", within the meaning of this paragraph, notwithstanding that such periods may vary from year to year.

"Tipped employee" means any employee engaged in an occupation in which the employee customarily and regularly receives more than \$20 a month in tips.

"Wage" means (except as the department may provide under section 387-11) legal tender of the United States or checks on banks convertible into cash on demand at full face value thereof and in addition thereto the reasonable cost as determined by the department, to the employer of furnishing an employee with board, lodging, or other facilities if such board, lodging, or other facilities are customarily furnished by such employer to the employer's employees. Except for the purposes of the last sentence of section 387-2, "wage" shall not include tips or gratuities of any kind.

"Week" or "workweek" means a fixed and regularly recurring period of seven consecutive days. [L Sp 1941, c 66, §2; am L 1943, c 159, §1; RL 1945, §4352; am L 1945, c 15, §1(1); am L 1949, c 292, §1; am L 1951, c 180, §1; am L 1953, c 161, §1; am L 1955, cc 15, 120, §1; RL 1955, §94-2; am L 1957, c 256, §3; am L 1959, c 89, §1 and c 164, §1; am L Sp 1959 2d, c 1, §27; am L 1962, c 15, §2 and c 19, §2; am L 1965, c 67, §1 and c 132, §1(a), (b), and c 167, §1; HRS §387-1; am L 1969, c 36, §§1, 2 and c 219, §1; am L 1976, c 89, §1; am L 1983, c 44, §1; gen ch 1985; am L 1991, c 264, §1; am L 2002, c 43, §1]

Case Notes

Defendants not entitled to summary judgment; in appropriate circumstances, portage may be considered in the nature of "gratuities" for the purposes of this section and §387-2; plaintiffs raised genuine issue of material fact as to whether "portage" is a "gratuity of any kind". 78 H. 351, 893 P.2d 779.

§387-2 Minimum wages. Except as provided in section 387-9 and this section, every employer shall pay to each employee employed by the employer wages at the rate of not less than:

- (1) \$5.25 per hour beginning January 1, 1993;
- (2) \$5.75 per hour beginning January 1, 2002; and
- (3) \$6.25 per hour beginning January 1, 2003.

The hourly wage of a tipped employee may be deemed to be increased on account of tips if the employee is paid not less than 25 cents below the applicable minimum wage by the employee's employer and the combined amount the employee receives from the employee's employer and in tips is at least 50 cents more than the applicable minimum wage. [L Sp 1941, c 66, §3; am L 1943, c 159, §2; RL 1945, §4353; am L 1945, c 15, §1(2); am L 1953, c 77, §1; am L 1955, c 15, §2; RL 1955, §94-3; am L 1957, c 256, §1; am L 1962, c 16, pt of §2; HRS §387-2; am L 1969, c 36, §3; am L 1974, c 14, §1; am L 1978, c 4, §1; gen ch 1985; am L 1987, c 224, §1; am L 1990, c 34, §25; am L 1991, c 264, §2; am L 2001, c 279, §1]

Cross References

Service charge disclosure when not distributed as employees' tip income, see §481B-14.

Case Notes

Defendants not entitled to summary judgment; in appropriate circumstances, portage may be considered in the nature of "gratuities" for the purposes of §387-1 and this section; plaintiffs raised genuine issue of material fact as to whether "portage" is a "gratuity of any kind". 78 H. 351, 893 P.2d 779.

§387-3 Maximum hours. (a) No employer shall, except as otherwise provided in this section, employ any employee for a workweek longer than forty hours unless the employee receives overtime compensation for the employee's employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which the employee is employed.

For the purposes of this section,

- (1) "Salary" means a predetermined wage, exclusive of the reasonable cost of board, lodging, or other facilities, at which an employee is employed each pay period;
- (2) If an employee performs two or more different kinds of work for the same employer, the total earnings for all such work for the pay period shall be considered to have been earned for performing one kind of work.
- (b) The regular rate of an employee who is employed on a salary shall be computed as follows:
 - (1) If the employee is employed on a weekly salary, the weekly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be divided by forty.
 - (2) If the employee is employed on a biweekly salary, the biweekly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be divided by two and the quotient divided by forty.
 - (3) If the employee is employed on a semi-monthly salary, the semi-monthly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be multiplied by twenty-four, the product divided by fifty-two and the quotient divided by forty.
 - (4) If the employee is employed on a monthly salary, the monthly salary and the reasonable cost of board, lodging, or other facilities if furnished to the employee, shall be multiplied by twelve, the product divided by fifty-two and the quotient divided by forty.

(c) The regular rate of an employee who is employed on a salary and in addition receives other wages such as, but not limited to, commissions, bonus, piecework pay, and hourly or daily pay shall be computed in the manner provided in this subsection. As used hereinabove, the term "other wages" shall not include the reasonable cost of board, lodging, or other facilities.

- (1) If the employee's salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, equal or exceed fifty per cent of the employee's total earnings for the pay period, the total earnings shall be reduced to a regular rate in the manner provided in paragraph (1), (2), (3), or (4) of subsection (b), whichever is applicable.
- (2) If the employee's salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, are less than fifty per cent of the employee's total earnings for the pay period, the total earnings shall be reduced to a regular rate in the manner provided in paragraph (1), (2), (3), or (4) of subsection (b), whichever is applicable, except that the actual number of hours worked in the workweek shall be substituted for the final divisor of forty. Such an employee shall receive overtime compensation for employment in excess of forty hours in a workweek at a rate not less than one-half times the employee's regular rate.

(d) The regular rate of an employee whose compensation is based on other than salary shall be computed in the manner provided in paragraph (2) of subsection (c). The reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be included in computing the employee's regular rate. Such an employee shall receive overtime compensation for such employment in excess of forty hours in a workweek at a rate not less than one-half times the employee's regular rate.

(e) An employer,

- (1) Who is engaged in agriculture and in the first processing of milk, buttermilk, whey, skim milk, or cream into dairy products, or in the processing of sugar cane molasses or sugar cane into sugar (but not refined sugar) or into syrup, or in the first processing of or in canning or packing any agricultural or horticultural commodity, or in handling, slaughtering, or dressing poultry or livestock; or
- (2) Who is engaged in agriculture and whose agricultural products are processed by an employer who is engaged in a seasonal pursuit or in processing, canning, or packing operations referred to in paragraph (1); or
- (3) Who is at any place of employment engaged primarily in the first processing of, or in canning or packing seasonal fresh fruits;

shall not be required to pay overtime compensation for hours in excess of forty in a workweek to any of the employer's employees during any of twenty different workweeks, as selected by the employer, in any yearly period commencing July 1, for employment in any place where the employer is so engaged. The employer, however, shall pay overtime compensation for such employment in excess of forty-eight hours in any such exempt workweek at the rate and in the manner provided in subsections (a), (b), (c) and (d), whichever is applicable, except that the word "forty-eight" shall be substituted for the word "forty" wherever it appears in subsections (b), (c), and (d).

(f) No employer shall employ any employee in split shifts unless all of the shifts within a period of twenty-four hours fall within a period of fourteen consecutive hours, except in case of extraordinary emergency.

(g) This section shall not apply to any overtime hours worked by an employee of an air carrier subject to Title II of the Railway Labor Act, 45 U.S.C. section 181 et seq.; provided such overtime hours are the result of a voluntary agreement between employees to exchange work time or days off. [L Sp 1941, c 66, pt of §4; RL 1945, §4354; RL 1955, §94-4; am L 1957, c 256, §2; am L 1959, c 32, §§1, 2; am L 1962, c 19, §3; am L 1965, c 85, §1; HRS §387-3; gen ch 1985; am L 1998, c 158, §2]

Case Notes

Federal Motor Carrier Act does not preempt this section. 833 F.2d 809.
Cited: 178 F.2d 603, 605.

§387-4 Wage discrimination prohibited. No employer shall discriminate in any way in the payment of wages as between persons of different races or religions or as between the sexes; provided that nothing herein shall prohibit a variation of rates of pay for employees engaged in the same classification of work based upon a difference in seniority, length of service, substantial difference in duties or services performed, difference in the shift or time of day worked, or hours of work; and provided that an employer who is paying a wage rate differential in violation of this section shall not, in order to comply with this section, reduce the wage rate of any employee. [L 1959, c 122, §2; Supp. §94-4.5; HRS §387-4; am L 1972, c 63, §1]

[§387-4.5] Provisions of law may not be waived by agreement. No provision of this chapter may in any way be contravened or set aside by private agreement. [L 1977, c 92, §1]

§387-5 Duty of director; employees, salaries. The director of labor and industrial relations shall enforce this chapter. The director may appoint such assistants and such clerical, stenographic, and other help as may be necessary for the proper enforcement of this chapter subject to any civil service act relating to state employees. The salaries of all of the foregoing appointees and employees shall be as fixed by law. [L Sp 1941, c 66, pt of §5; RL 1945, §4355; RL 1955, §94-5; am L Sp 1959 2d, c 1, §27; HRS §387-5]

§387-6 Employer's records; posting of notices; furnishing of pay data; director's rights and duties. (a) Every employer shall keep in or about the premises wherein any employee is employed a record of the name, address, and occupation of each such employee, of the amount paid each pay period to each such employee, of the hours worked each day and each workweek by each such employee, and of such other information and for such periods of time as the director of labor and industrial relations may by regulation prescribe. The director or the director's authorized representative shall for the purpose of examination have access to and the right to copy from such records. Every employer shall furnish to the director or the director's authorized representative such information relating to the employment of workers and in such manner as the director may prescribe.

(b) Every employer shall post and keep posted such notices pertaining to the application of the law as shall be prescribed by the director in conspicuous places in every establishment where any employee is employed so as to permit the employee to observe readily a copy on the way to or from the employee's place of employment.

(c) Every employer shall furnish each employee at every pay period a legible printed, typewritten or handwritten notice showing the employee's (1) total hours worked, (2) overtime hours, (3) straight-time compensation, (4) overtime compensation, (5) other compensation, (6) total gross compensation, (7) amount and purpose of each deduction, (8) total net compensation, (9) date of payment, and (10) pay period covered.

(d) The director shall cause this chapter to be printed and copies thereof shall be furnished to interested persons upon request without charge. Copies of orders of the director and of rules and regulations of the director shall also be furnished to employers affected thereby without charge.

(e) Every employer shall permit the director or the director's authorized representative to confer with and interrogate any employee of the employer at the place of employment and during working hours with respect to any matter cognizable under this chapter. [L Sp 1941, c 66, pt of §5; RL 1945, §4356; RL 1955, §94-6; am L 1961, c 118, §1; am L 1965, c 132, §1(c); HRS §387-6; gen ch 1985]

§387-7 Wilful violations; penalty. Any employer who wilfully hinders or delays the director of labor and industrial relations or the director's authorized representative in the performance of the director's duties in the enforcement of this chapter; or who wilfully refuses to admit the director or the director's authorized representative to any place of employment; or who fails to keep or who falsifies any record required under section 387-6 or who refuses to make such records accessible or to give information required for the proper enforcement of this chapter, upon demand, to the director or the director's authorized representative shall be fined not more than \$500 or imprisoned not more than ninety days, or both. [L Sp 1941, c 66, pt of §5; RL 1945, §4357; RL 1955, §94-7; HRS §387-7; gen ch 1985]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

§387-8 Disclosure of information. Except as otherwise provided herein, information secured from inspection of the records, or from the transcriptions or from the taking of transcriptions thereof, or from inspection of the employer's premises by the director of labor and industrial relations or the director's authorized representative, shall be held confidential and shall not be disclosed or be open to any person. The information may be made available:

- (1) To officials concerned with, and for the purposes of, the administration of the laws relating to matters under the jurisdiction of the director;
- (2) To any agency of this or any other State, or any federal agency for the purposes of enforcing this chapter;
- (3) To any employee to the extent necessary for the proper presentation of the employee's claim under section 387-12;
- (4) To the Wage and Hour and Public Contracts Divisions of the United States Department of Labor. [L Sp 1941, c 66, pt of §5; am L 1943, c 159, §3; RL 1945, §4358; RL 1955, §94-8; am L 1965, c 132, §1(d); HRS §387-8; gen ch 1985]

§387-9 Special minimum wages for learners; apprentices; full-time students; paroled wards of Hawaii youth correctional facility; handicapped workers. (a) Notwithstanding the provisions of section 387-2, the director may by rules provide for the employment:

- (1) Of learners, of apprentices, of part-time employees who are full-time students attending public or private schools other than colleges, universities, business schools, or technical schools, and of wards paroled from the Hawaii youth correctional facility, under special certificates issued by the director, at such wages lower than the applicable minimum wage and subject to such limitations as to time, number, proportion, and length of service as the director shall prescribe; and
 - (2) Of individuals whose earning capacity is impaired by old age or physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the applicable minimum wage and for such period as shall be fixed in the certificates.
- (b) (1) After June 30, 1974, and until June 30, 1976, notwithstanding the provisions of section 387-2 and of the foregoing subsection, an employer engaged in a seasonal pursuit may employ an employee:
- (A) To whom the minimum wage rate required by section 387-2 would apply in such employment but for this subsection, and
 - (B) Who is a full-time student who attended a public or private school, other than a college, university, business school or technical school, for at least six months during the preceding twelve-month period, at a special minimum wage rate not less than eighty-five per centum of a minimum wage applicable under section 387-2.
- (2) The director may by regulation prescribe standards and requirements to insure that this subsection will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the special minimum wage rate authorized by this subsection is applicable. [L Sp 1941, c 66, §6; RL 1945, §4359; RL 1955, §94-9; am L 1962, c 16, pt of §2; am L 1963, c 49, §3; HRS §387-9; am L 1974, c 14, §2]

§387-10 Oaths; affidavits; subpoenas; witnesses; immunities. The director of labor and industrial relations or the director's authorized representative may administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any matter under investigation. The subpoena shall be signed and issued by the director or the director's authorized representative. In cases of failure of any person to comply with any subpoena lawfully issued under this section or on the refusal of any witness to produce evidence or to testify to any matter regarding which the witness may be lawfully interrogated, any circuit court, or the judge thereof, upon the application of the director or the director's authorized representative, shall compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify therein. The director may certify to official acts.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the director or the director's authorized representative, or in obedience to the subpoena of the director or the director's authorized representative, or in any cause or proceeding instituted under this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled to testify or produce evidence, documentary or otherwise, after having claimed the individual's privilege against self-incrimination, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [L Sp 1941, c 66, §7; RL 1945, §4360; RL 1955, §94-10; HRS §387-10; gen ch 1985]

Cross References

Depositions, see chapter 624.

Hearings, see chapter 91.

Oaths, subpoenas, see §§603-21.9, 621-1, 621-12.

§387-11 Rules and regulations. The department of labor and industrial relations may make, issue, amend, and rescind such rules and regulations as are necessary or appropriate to carry out this chapter. The rules and regulations, without being limited thereto, and without limiting the generality of the foregoing, may define terms used in this chapter, may include such terms and conditions, including the restriction or prohibition of industrial homework or of such other acts or practices, as the department finds necessary or appropriate to carry out the purposes of this chapter, and to prevent the circumvention or evasion thereof and to safeguard the standards therein established; and shall include such partial or total restrictions or prohibitions on the employment (notwithstanding the payment of one and one-half times the regular rate of pay) of employees in excess of the hours specified in the first paragraph of section 387-3 as the department finds necessary to prevent the reduction of wage rates for the purpose of evading the penalizing effect of the overtime compensation provisions of the first paragraph of section 387-3 or the circumvention by other devices of the intent of such paragraph to reduce hours of labor; and shall provide for reasonable deductions from the minimum wage applicable under this chapter for board, lodging, or other similar services furnished by an employer to the employer's employees.

Rules and regulations of the department issued pursuant to this section which relate to industrial homework or to employment in excess of the hours specified in the first paragraph of section 387-3 shall be made only after notice to interested persons and a public hearing by the department at which such persons may be heard. [L Sp 1941, c 66, §8; RL 1945, §4361; RL 1955, §94-11; am L Sp 1959 2d, c 1, §27; am L 1965, c 96, §74; HRS §387-11; gen ch 1985]

Cross References

Garment industry homework, see chapter 375.

Rulemaking, see chapter 91.

§387-12 Penalties; collection of unpaid wages; injunctions; etc. (a) Criminal. (1) Any person divulging information in violation of section 387-8, or (2) any employer who wilfully violates this chapter or of any rule, regulation, or order issued under the authority of this chapter, or (3) any employer or the employer's agent or any officer or agent of a corporation who discharges or in any other manner discriminates against any employee because the employee has made a complaint to the employee's employer, to the director, or to any other person that the employee has not been paid wages in accordance with this chapter, or has instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings, or (4) any employer or the employer's agent or any officer or agent of a corporation who pays or agrees to pay any employee compensation less than that which the employee is entitled to under this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50 nor more than \$500 or by imprisonment for a period not to exceed one year or by both such fine and imprisonment.

§387-12

(b) Liability to employee. Any employer who violates any provision of sections 387-2 and 387-3 shall be liable to the employee or employees affected in the amount of their unpaid minimum wages or unpaid overtime compensation, and in case of wilful violation in an additional equal amount as liquidated damages.

(c) Collection suits; attorney's fee; assignments; relief from costs. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of oneself or themselves and other employees similarly situated, or the employee or employees may designate an agent or representative to maintain action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, in the event the plaintiff or plaintiffs prevail, allow a reasonable attorney's fee to be paid by the defendant and costs of the action. At the request of any person paid less than the amount to which the person is entitled under this chapter, the director may take an assignment in trust for the assigning employee of the full amount to which the employee is entitled under this subsection and may bring any legal action necessary to collect the claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court in the event the director prevails. The director shall not be required to pay the filing fee or other costs in connection with such action, including the opposing party's attorney's fees and costs. The director, in case of suit, may join various claimants against the same employer in one cause of action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the director in an action in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation owing to the employee under section 387-2 or 387-3 by an employer liable therefor under this section.

(d) Injunctions. (1) Whenever it appears to the director that any employer is engaged in any act or practice which constitutes or will constitute a violation of this chapter, or of any regulation, the director may in the director's discretion bring an action in the circuit court of the circuit in which it is charged the act or practice complained of occurred to enjoin the act or practice and to enforce compliance with this chapter or with the regulation, and upon a proper showing, a permanent or temporary injunction or decree or restraining order shall be granted without bond.

(2) The circuit courts shall have jurisdiction, for cause shown, to restrain any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under section 387-2 or 387-3.

(e) Restitution of illegal deductions; effect of. Whenever in the course of an inspection made for the purposes of this chapter it is determined that there has been an illegal deduction of wages under chapter 388, the director or the director's authorized representative may secure restitution of such deductions. If the restitution is made, no prosecution under chapter 388 shall be instituted or maintained. [L Sp 1941, c 66, §10; am L 1943, c 159, §4; RL 1945, §4363; am L 1945, c 15, §1(3), (4); RL 1955, §94-13; am L 1963, c 49, §§1, 2 and c 158, §2; am L 1965, c 132, §1(e); HRS §387-12; gen ch 1985; am L 1999, c 251, §3]

Rules of Court

Collection suits, maintenance of, see HRCF rules 17(a), 18(a), 20, 23.
Injunctions, see HRCF rule 65.

§387-13 Right of collective bargaining protected. Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively through representatives of their own choosing in order to establish wages in excess of the applicable minimum under this chapter, or to establish hours of work shorter than the applicable maximum under this chapter. [L Sp 1941, c 66, §11; RL 1945, §4364; RL 1955, §94-14; HRS §387-13]

§387-14 State-federal cooperation. In the administration of this chapter, the department of labor and industrial relations shall cooperate to the fullest extent consistent with this chapter with the Administrator of the Wage and Hour Division, United States Department of Labor. [L Sp 1941, c 66, §12; RL 1945, §4365; RL 1955, §94-15; am L Sp 1959 2d, c 1, §27; HRS §387-14]

§387-15 Relation to child labor law. Nothing in this chapter shall in any way repeal or affect the validity of chapter 390. [L Sp 1941, c 66, §15; RL 1945, §4366; RL 1955, §94-16; HRS §387-15; am L 1980, c 232, §22]

HAWAII ADMINISTRATIVE RULES
TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

CHAPTER 20

WAGE AND HOUR

Subchapter 1 The Administration and Enforcement of the Wage and Hour Law

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SUBCHAPTER 1

THE ADMINISTRATION AND ENFORCEMENT OF THE
WAGE AND HOUR LAW

Historical Note: Subchapter 1, chapter 20 of title 12 is based substantially upon "Rule XIII, Relating to the Administration and Enforcement of the Hawaii Wage and Hour Law" of the Department of Labor and Industrial Relations. [Eff. 11/1/51; am 10/15/62; am 3/1/66; am 1/1/68; am 1/1/70; am 7/19/75; R 10/2/81]

§12-20-1 Definitions. As used in this chapter:

"Department" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Director" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Employ" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Employee" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Employer" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Tip" means a sum of money determined solely by a customer and given in recognition of service performed by an employee who retains it as a gift or gratuity. It may be paid in cash, bank check, or other negotiable instrument payable at par as well as amounts transferred by employer to employee by direction of the credit customer who designates amounts to be added to the customer's bill as tips. Compulsory or negotiated service charges and special gifts in forms other than described above are not counted as tips.

"Tip credit" is the amount by which the wage paid a tipped employee is deemed to be increased because of tips received by the employee.

"Tipped employee" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Wage" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Week" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Workweek" shall be as defined in section 387-1, Hawaii Revised Statutes. [Eff. Oct. 2, 1981]

(Auth: HRS §387-11) (Imp: HRS §387-11)

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§12-20-2 Bona fide executive capacity. The term "individual employed...in a bona fide executive...capacity" means any individual:

- (1) Who is compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities);
- (2) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (3) Who customarily and regularly directs the work of two or more employees;
- (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
- (5) Who customarily and regularly exercises discretionary powers. [Eff. Oct. 2, 1981; am Aug. 8, 1988] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-3 Bona fide administrative capacity. The term "individual employed...in a bona fide...administrative ...capacity" means any individual:

- (1) Who is compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities); and
- (2) Whose primary duty consists of the performance of office or non-manual field work directly related to management policies or general business operations of the employer or the employer's customers, which includes work requiring the exercise of discretion and independent judgment. The individual may be a person:
 - (A) Who regularly and directly assists a proprietor or an individual employed in a bona fide executive or administrative capacity (as the terms are defined in this subchapter); or
 - (B) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or
 - (C) Who executes under only general supervision special assignments or tasks. [Eff. Oct. 2, 1981; am Aug. 8, 1988] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-4 Bona fide supervisory capacity. The term "individual employed...in a bona fide...supervisory ...capacity" means any individual:

- (1) Who is compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities);
- (2) Whose primary duty consists of the supervision or direction of other employees; and
- (3) Who customarily and regularly directs the work of at least five employees in the enterprise in which the individual is employed. [Eff. Oct. 2, 1981; am Aug. 8, 1988] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-5 Bona fide professional capacity. The term "individual employed...in a bona fide...professional capacity" means any individual:

- (1) Who is compensated on a fixed salary or fixed fee of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities); provided that the salary requirement shall not apply in the case of an individual:
 - (A) Who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof; or
 - (B) Who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or residency program pursuant to the practice of medicine or any of its branches; or
 - (C) Who is employed and engaged as a teacher as provided in paragraph (2)(C);
- (2) Whose primary duty consists of the performance of:
 - (A) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

- (B) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the individual; or
- (C) Teaching, tutoring, instructing, or lecturing and who is employed and engaged in this activity as a teacher certified or recognized in the school system or educational establishment or institution by which the person is employed;
- (3) Whose work requires the consistent exercise of discretion and judgment in its performance; and
- (4) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. [Eff. Oct. 2, 1981; am Aug. 8, 1988] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-6 Outside salesman capacity. The term "individual employed...in the capacity of outside salesman" means any individual:

- (1) Who is employed for the purpose of, and who is customarily and regularly engaged away from the employer's place or places of business in:
 - (A) Making sales; or
 - (B) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- (2) Whose hours of work of a nature other than that described in paragraphs (1)(A) and (1)(B) do not exceed forty per cent of the hours worked in the workweek by non-exempt employees of the employer; provided that the hours of work do not include hours of work of a nature other than sales or solicitations which are in excess of five per cent of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performed incidental to and in conjunction with the employee's own outside sales or solicitations. The term "sales" shall include any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition with respect to tangible and intangible property. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-7 Outside collector. The term "individual employed...as an outside collector" means any individual:

- (1) Who is employed for the purpose of, and who is customarily and regularly engaged away from the employer's place or places of business in:
 - (A) Collecting money for goods or services previously or presently furnished by the employer; or
 - (B) Collecting money for an account placed in the hands of the employer for collection; and
- (2) Whose hours of work of a nature other than that described in paragraphs (1)(A) and (1)(B) do not exceed twenty per cent of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performed incidental to and in conjunction with the employee's own outside collections. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-8 Record keeping requirements. (a) Every employer shall maintain and keep in or about the premises where any employee is employed, records in English containing the following information on each employee to whom sections 387-2 and 387-3, Hawaii Revised Statutes, apply:

- (1) Name in full, social security number, and any identifying symbol or number used in place of or in addition to a name on any record kept by the employer relating to the employee;
- (2) Home address;
- (3) Date of birth, if under nineteen;
- (4) Occupation in which employed;
- (5) Rate of pay and length of pay period;
- (6) Hours worked each workday and total hours worked each workweek;

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- (7) Total daily or weekly straight-time wages;
- (8) Total weekly overtime wages;
- (9) The amount and purpose of additions to or deductions from wages paid each pay period;
- (10) Total wages paid each pay period, date of payment, and pay period covered;
- (11) Date of hire; and
- (12) Date of termination.

(b) These records shall be preserved by the employer for at least six years. [Eff. Oct. 2, 1981] (Auth: HRS

§§387-6, 387-11) (Imp: HRS §387-6)

§12-20-9 Reasonable cost of board, lodging, or other facilities. (a) The reasonable cost to the employer of furnishing an employee with board, lodging, or other facilities is the actual cost of providing the board, lodging, or other facilities and shall not include a profit to the employer or to any affiliated person.

(b) The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be calculated in accordance with generally accepted accounting principles. The term "depreciation" shall include obsolescence.

(c) The cost of furnishing facilities which are primarily for the benefit or convenience of the employer shall not be included as wages. These facilities may include, but are not limited to:

- (1) Tools of the trade and other materials and services incidental to carrying on the employer's business; and
- (2) Uniforms and their laundering, where the nature of the business requires the employee to wear a uniform.

[Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §§387-1 to 387-3)

§12-20-10 Reduction of wages. No employer shall reduce a wage paid to an employee which is in excess of the minimum wage under chapter 387, Hawaii Revised Statutes, for the purpose of evading the overtime provisions of section 387-3, Hawaii Revised Statutes. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §§387-3, 387-11)

§12-20-11 Payment of wages to tipped employees. (a) Where employees practice tip-splitting, each employee shall be considered tipped only to the extent of the proportionate share received and retained by each. Similarly, where an employer in furtherance of a tip-pooling arrangement redistributes the tips to the employees upon some basis mutually agreed by the employees themselves, only the amounts actually received and retained by each individual shall be considered tips.

(b) Where an employee is employed in two or more different occupations for the same employer, tip credit may be taken only for hours worked in the occupation in which the employee customarily and regularly receives more than \$20 a month in tips.

(c) The employer shall notify all employees in writing at the time of hire if tip credit is to be used. The employer's policy on tip credit may be changed if the change is intended to be permanent and not designed to evade the requirements of the law. Notification of changes shall be given to the employees in writing or through a posted notice prior to the commencement of the pay period.

(d) The regular rate of a tipped employee who works overtime shall be determined as provided in section 387-3, Hawaii Revised Statutes. Tips received in excess of the tip credit shall not be included in the regular rate.

(e) An employee who customarily and regularly receives more than \$20 a month in tips remains a tipped employee even though sickness, vacation, or the like reduces the amount of tips received in a particular month to \$20 or less. The employee must actually receive more than \$20 a month in tips and shall not be considered a tipped employee solely because of employment in an occupational group which has a record of receiving more than \$20 a month in tips. An employee may qualify as a tipped employee in the initial or terminal month of employment provided that tips received in a particular week or weeks of a month is at a rate in excess of \$20 a month. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §§387-1, 387-2, 387-3)

§12-20-12 Record keeping requirements; tipped employees. Every employer claiming tip credit shall, in addition to records required by section 12-20-8, maintain and preserve payroll or other records containing the following information and data with respect to each tipped employee:

- (1) A symbol placed on the pay records identifying each employee whose wage is partially determined by tips;
- (2) Weekly amount of tips received by the employee;
- (3) Amount by which the wages of each tipped employee have been increased because of tips as determined by the employer;
- (4) The amount per hour which the employer takes as tip credit. This amount shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week;
- (5) Hours worked each workday in any occupation in which the employee does not receive tips, and total weekly straight-time payment made by the employer for these hours; and
- (6) Hours worked each workday in occupations in which the employee receives tips, and total weekly straight-time wages for these hours. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §§387-1, 387-2, 387-6)

§12-20-13 Computation of time. The time in which any act provided by this chapter is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded. As used in this chapter, "holiday" includes any day designated as such pursuant to section 8-1, Hawaii Revised Statutes. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §387-9)

§§12-20-14 to 12-20-50. (Reserved)

OTHER RELATED PUBLICATIONS

Publication Number	Title
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HWHL-1	Notice to Employers Under the Hawaii Wage and Hour Law (poster)
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eHWHL-1	Poster also available on department's website at http://dlir.state.hi.us/
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Hawaii Administrative Rules, Title 12, Chapter 20, Wage and Hour:

HWHL-2	Subchapter 2	Employment of Student-Learners
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HWHL-3	Subchapter 3	Employment of Handicapped Clients in Sheltered Workshops
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HWHL-4	Subchapter 4	Employment of Student-Workers
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HWHL-5	Subchapter 5	Employment of Handicapped Persons
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HWHL-6	Subchapter 6	Employment of Paroled Wards of the Hawaii Youth Correctional Facility
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Copies are available upon request at the following offices of the Department of Labor and Industrial Relations:

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Oahu	830 Punchbowl Street, Room 340, Honolulu 96813	586-8777
Kauai	State Building, Room 202 3060 Eiwa Street, Lihue 96766-1887	274-3351
Maui	2264 Aupuni Street, Wailuku 96793	243-5322
Hilo	State Building, Room 108 75 Aupuni Street, Hilo 96720	974-6464
West Hawaii	Post Office Building 81-990 Halekii Street, Kealahou 96750 (Mailing: P.O. Box 49)	322-4808